state." The state conveyed land to the plaintiff for value by letters patent, which, by express terms, should "in no case operate as a warranty of title." The title proving invalid, a special enactment conferred jurisdiction on the Court of Claims to determine the plaintiff's claim for damages and to enter judgment therefor. *Held*, that the enactment is constitutional although it authorizes a judgment for the plaintiff notwithstanding the lack of warranty. *Wheeler* v. *State of New York*, 190 N. Y. 406.

This decision affirms the decision of the lower court, commented upon in 18 HARV. L. REV. 465.

CONSTITUTIONAL LAW — PERSONAL RIGHTS — ACT REQUIRING WEEKLY PAYMENT OF EMPLOYEES OF CORPORATION IN MONEY. — A statute required corporations engaged in certain enumerated classes of business to pay their employees in money each week. *Held*, that the statute is constitutional. *Lawrence* v. *Rutland R. Co.*, 67 Atl. 1091 (Vt.).

The court seemingly relies on the state's reserved power to alter corporate charters, though it also mentions the quasi-public character of the corporations involved. The constitutionality of such legislation has been the subject of much conflict. It has been upheld variously as an exercise of the reserved power to amend, or of the broader police power. *State* v. *Browne, etc., Mfg. Co.*, 18 R. I. 16; *Opinion of the Justices*, 163 Mass. 589; *contra, Republic Iron & Steel Co.* v. *State*, 66 N. E. 1005 (Ind.). In reality the considerations justifying the exercise of these two powers seem the same; both, in essence, look to the interest of the public. The liberty to contract is fundamental, but it is neither absolute nor universal; in a conflict, inevitable at times, with the public welfare, the latter, if clear, is paramount. See *Frisbie* v. *United States*, 157 U. S. 160, 165. And it is not inconceivable that a "weekly payment" act, or a "truck" act, or a combination of the two, as in the present case, may be necessary because of local industrial conditions. See 19 HARV. L. REV. 62. That, of course, is a question of fact, and the sole concern of the court is with the reasonableness of the legislative determination of this question in the light of the conflict of rights.

CONSTITUTIONAL LAW — WHO MAY SET UP UNCONSTITUTIONALITY — OFFICIAL INTEREST NOT SUFFICIENT TO RAISE FEDERAL QUESTION. — A county court refused to assess a tax in accordance with a state statute. In *mandamus* proceedings the highest court of the state declared the statute to be constitutional. The county court appealed to the United States Supreme Court. *Held*, that since the interest of the appellant is official and not personal there is no federal question involved. *Braxton County Court* v. *West Virginia*, 208 U. S. 192. See NOTES, p. 438.

CONTEMPT — POWER TO PUNISH FOR CONTEMPT — POWER OF APPELLATE COURT TO PUNISH VIOLATION OF INJUNCTION PENDING APPEAL. — Pending an appeal from a judgment of the lower court granting a perpetual injunction, the defendant violated the decree. *Held*, that the appellate court is the proper tribunal to punish the contempt. *Menuez* v. *Grimes Candy Co.*, 83 N. E. 82 (Oh.).

When an appeal is taken from a decree of the lower court dissolving an injunction and the upper court grants a *supersedeas* operating as a revival of the injunction, it has been held that the upper court should punish violations thereof. *State* v. *Bridge Co.*, 16 W. Va. 864. In that case it is the upper court which makes the injunction operative. But when a perpetual injunction has been granted in the lower court, the perfecting of an appeal, according to the great weight of authority, does not destroy the operative force of the injunction. *Leonard* v. *Ozark Land Co.*, 115 U. S. 465. Pending such an appeal the upper court merely leaves the decree of the lower court in full force. *State* v. *Harness*, 42 W. Va. 414. By the appeal the lower court is merely deprived of the power to take further affirmative action. See *Sixth Ave. R. Co.* v. *Gilbert El. R. Co.*, 71 N. Y. 430. It may still take steps necessary to preserve the *status quo*. *Hinson* v. *Adrian*, 91 N. C. 372. Hence it would seem that,

pending an appeal from the decree granting an injunction, the lower court is the proper tribunal to punish disobedience of the injunction. *State* v. *Dillon*, 96 Mo. 56.

CORPORATIONS — CORPORATE POWERS AND THEIR EXERCISE — EXTERIOR ADVERTISING ON PUBLIC OMNIBUS. — The plaintiff corporation maintained large, highly colored advertising signs upon the outside of its omnibuses. When threatened with interference by the city, the plaintiff sought to enjoin municipal action. *Held*, that an injunction will not be granted, as the plaintiff in engaging in exterior advertising is acting *ultra vires*. *The Fifth Avenue Coach Co.* v. *City of New York*, 38 N. Y. L. J. 1675 (N. Y., Sup. Ct., Jan. 1908).

The case presents a novel application of the doctrine of *ultra vires*. The franchises of public corporations are strictly construed and the courts are slow to allow them to indulge in subordinate undertakings which are not incidental to the prosecution of their main undertaking. See *Davis* v. *Old Colony R. R.*, 131 Mass. 258. While refreshment rooms in depots add to the convenience of passengers, they derive no benefit from exterior advertising, and to hold that the plaintiff has no such incidental power seems proper. *Pittsburgh, etc., Co.* v. *Seidell*, 6 Pa. Dist. 414. Advertising on station platforms, however, is justified on the ground of custom. See *Interborough R. T. Co.* v. *City of N. Y.*, 47 N. Y. Misc. 221. The court regrets its inability to treat the advertising as a nuisance. There is a marked tendency in recent cases to recognize public æsthetics as a basis for legal action. See 20 HARV. L. REV. 35. But as yet the use of private property has not been limited by prohibiting offensive advertisements. *City of Chicago* v. *Gunning System*, 214 Ill. 628. It is to be hoped that the courts will soon declare that the prohibition of unsightly advertising is as much within the police power as the prohibition of offensive noises and odors. See FREUND, POLICE POWER, § 182.

CORPORATIONS — DISTINCTION BETWEEN CORPORATION AND ITS MEMBERS — BINDING EFFECT ON STOCKHOLDERS OF CONTRACT MADE BY CORPORATION. — The X corporation with the assent of the individual defendants, its principal stockholders, sold all of its property, including good will, to the plaintiff, and covenanted that it would no longer engage in the same business. The individual defendants with others thereafter formed the defendant corporation, which proceeded to carry on that same line of business. *Held*, that neither the individual defendants nor the defendant corporation is precluded from so doing by the contract of the X corporation. *Donnell* v. *Herring, etc., Co.*, 208 U. S. 267.

For a discussion of this case in the lower court, see 20 HARV. L. REV. 223.

DAMAGES — MEASURE OF DAMAGES — LOSS OF USE OF AUTOMOBILE. — The plaintiff's automobile was damaged by the negligent act of the defendant, and the plaintiff was deprived of its use for three weeks while it was undergoing repairs. He was accustomed to use the car solely for purposes of health and pleasure. *Held*, that it is improper to admit evidence of the rental value of the machine. *Bondy* v. *New York City R. Co.*, 56 N. Y. Misc. 602.

The ordinary measure of damages in the case of injury to personal property is the expense of restoration, deterioration in value, and compensation for the loss of the use of the chattel. *Streett* v. *Laumier*, 34 Mo. 469; *Allen* v. *Fox*, 51 N. Y. 562. The plaintiff may recover for the deprivation of the use though he suffers no pecuniary loss thereby. *The Mediana*, [1900] A. C. 113. He is entitled to the use of his property and should be compensated for the loss of that use whether he would have gained a profit from it or enjoyed it himself. If the plaintiff had hired another automobile he could have recovered the reasonable expense of so doing. *Cf. Wellman* v. *Miner*, 19 N. Y. Misc. 644. It would seem to follow that if he chooses to do without a machine, he is entitled to compensation for the deprivation, which does not seem to be conjectural damage. In ascertaining the value of the use of a chattel, the rental value is proper evidence. *Chauvin* v. *Valiton*, 8 Mont. 451. The principal case, however, is in accord with a previous decision of the same court. *Foley* v. *Forty-Second St. R. Co.*, 52 N. Y. Misc. 183.